

## AGREEMENT FOR DESIGN SERVICES

### **New Traffic Signal on Clay Bank Road at Fonstall Way**

THIS AGREEMENT, made and entered into as of June 27, 2017, by and between the CITY OF FAIRFIELD, a municipal corporation, hereinafter referred to as "CITY" and Wood Rogers, Inc. hereinafter referred to as "CONSULTANT."

#### RECITALS

A. CITY desires to contract for certain consulting work necessary for the installation of a new Traffic Signal on Clay Bank Road at Fonstall Way, and for the purposes of this Agreement shall be called "PROJECT," and,

B. CONSULTANT is willing and qualified to undertake said consulting work;

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements herein set forth, the parties do hereby agree as follows:

#### AGREEMENT

##### I. DUTIES OF CONSULTANT

The CONSULTANT shall provide professional consulting services required for design and construction of the PROJECT as follows (collectively, "Consultant's Services"):

- A. Project Coordination. The CONSULTANT's primary contact with the CITY shall be the CITY's Project Manager (Garland Wong) or any other as designated by the City Engineer.
- B. Project Scope. The CONSULTANT shall provide the engineering design services in accordance with the Scope of Work attached hereto as Exhibit "A".
- C. CONSULTANT shall, at its sole cost and expense, furnish all facilities and equipment, which may be required for furnishing services pursuant to this Agreement.

## II. DUTIES OF CITY

The CITY shall:

- A. Make available previous plans, reports, and all other data relative to the design of the PROJECT and full information as to the CITY's requirements, including title reports and condemnation guarantees as required.
- B. Review preliminary and final plans, specifications, estimates, and other documents presented by CONSULTANT and render decisions within a reasonable time, and give prompt notice to CONSULTANT at any time CITY observes or otherwise becomes aware of any error, omission, or defect in the PROJECT.
- C. Provide for all necessary environmental clearances.
- D. Reproduce and distribute bid documents, advertise the project for bidding purposes, maintain a plan holders list, and distribute addenda.
- E. Provide construction management services as required.
- F. Provide construction inspection and red-lined drawings from which CONSULTANT shall prepare "Record Drawings".
- G. Make all necessary provisions for CONSULTANT to enter upon public and private property as required in the performance of Consultant's Services under this Agreement.

## III. MISCELLANEOUS PROVISIONS

- A. CONSULTANT shall not assign any rights or duties under this Agreement to a third party without the prior written consent of CITY.
- B. It is understood by and between the parties hereto that CONSULTANT, in the performance of this Agreement, shall act as, and be, an independent contractor and not an agent or employee of CITY. CITY shall have the right to control CONSULTANT only insofar as the results of CONSULTANT's Services rendered pursuant to this Agreement; however, CITY shall not have the right to control the means by which CONSULTANT accomplishes the Consultant's Services rendered pursuant to this Agreement.

- C. CONSULTANT represents and warrants to CITY that CONSULTANT has all licenses, permits, qualifications and approvals of whatsoever nature which are legally required for CONSULTANT to practice CONSULTANT'S profession. CONSULTANT represents and warrants to CITY that CONSULTANT shall, at its sole cost and expense, keep in effect at all times during the term of this Agreement, any licenses, permits, and approvals which are legally required for CONSULTANT to practice his or her profession.
- D. Except as CITY may specify in writing, CONSULTANT shall have no authority, express or implied, to act on behalf of CITY in any capacity whatsoever as an agent. CONSULTANT shall have no authority, express or implied, pursuant to this Agreement, to bind CITY to any obligation whatsoever.
- E. CONSULTANT shall assign only competent personnel to perform Consultant's Services. In the event that CITY, in its sole discretion, at anytime during the term of this Agreement, desires the removal of any person or persons assigned by CONSULTANT to perform Consultant's Services, CONSULTANT shall remove any such person immediately upon receiving notice from CITY of the desire of CITY for the removal of such person or persons.
- F. CONSULTANT shall perform Consultant's Services in the manner and according to the standards observed by a competent practitioner of the profession in which CONSULTANT is engaged in the geographical area in which CONSULTANT practices his or her profession. All products of whatsoever nature which CONSULTANT delivers to CITY pursuant to this Agreement shall be prepared in a substantial, first-class, and workmanlike manner, and conform to the standards of quality normally observed by a person practicing in CONSULTANT's profession. CITY shall be the sole judge as to whether the product of the CONSULTANT is satisfactory.
- G. CONSULTANT is not a "public official" for purposes of Government Code §§ 87200 et seq. CONSULTANT conducts research and arrives at conclusions with respect to his or her rendition of information, advice, recommendation or counsel independent of the control and direction of the CITY or any CITY official, other than normal contract monitoring. In addition, CONSULTANT

possesses no authority with respect to any CITY decision beyond the rendition of information, advice, recommendation or counsel.

- H. The parties hereto agree to immediately and diligently proceed with their respective duties as set forth herein to the end that the PROJECT will be completed satisfactorily within the shortest reasonable time.
- I. The CONSULTANT is not responsible for delay, nor shall CONSULTANT be responsible for damages or be in default or deemed to be in default by reason of strikes, lockouts, accidents, or acts of God: or the failure of CITY to furnish timely information or to approve or disapprove CONSULTANT's Services promptly; or delay or faulty performance by CITY, other contractors, or governmental agencies; or any other delays beyond CONSULTANT's reasonable control.

#### IV. COMPENSATION OF CONSULTANT

- A. Basis of Compensation. For and in consideration of Consultant's Services, CITY agrees to pay CONSULTANT, and CONSULTANT agrees to accept from CITY as full compensation for said services the following maximum, not to exceed, amount(s):
  - 1. For those services described in Section I. compensation shall be on a time and material basis with a maximum fee not to exceed EIGHTEEN THOUSAND FIVE HUNDRED DOLLARS (\$18,500).
- B. Extra Work and Change Order Fee. Extra Work performed by the CONSULTANT for any work required by the CITY which is not specified as part of Consultant's Services in Section I, including but not limited to, any changes to CONSULTANT's Services including but not limited to contract change orders after the award of the construction contract by the City Council, or testimony in Court, shall be compensated by the use of the time and material fee rates of the attached Exhibit "B." No extra work will be compensated for unless required by CITY in writing.

C. Schedule of Payments.

1. CONSULTANT shall submit, and CITY shall pay, monthly invoices for work performed during the previous month. For the time and material services billing shall be based on the hourly and fee rate charges set forth in Exhibit "B" attached hereto, and on the number of hours expended on the PROJECT by each classification of employee.
2. In the event PROJECT is terminated, CITY shall pay to CONSULTANT full compensation for work performed up until the date of CONSULTANT's receipt of written notification to cease work on the PROJECT.
3. CONSULTANT shall notify the CITY in writing when the CONSULTANT's invoices total billing is within 25% of the contract compensation as indicated in Section IV.A.

V. TIME OF COMPLETION

Consultant's Services shall be completed by December 31, 2018 or until the scope of work is complete.

VI. PROJECT MANAGER

CONSULTANT designates Karrie Mosca as Project Manager, to remain such unless or until CONSULTANT requests to change said designation and said request is approved by CITY. Major duties shall include:

- A. Personally direct all work essential to the PROJECT.
- B. Sign all letters and instruments as requested by, and on behalf of, CITY.
- C. Attend public meetings related to the PROJECT.

VII. CANCELLATION OF AGREEMENT

This Agreement may be canceled at any time by CITY for its convenience upon written notification to CONSULTANT. CONSULTANT shall be entitled to receive full compensation payment for all services performed and all costs incurred to the date of receipt of written notice to cease work on the PROJECT. Said compensation will be determined in accordance with Section IV. CONSULTANT

shall be entitled to no further compensation for work performed after the date of receipt of written notice to cease work on the PROJECT.

VIII. INDEMNIFY AND HOLD HARMLESS

- A. Indemnity for Design Professional Services. In connection with its design professional services hereunder, Consultant shall hold harmless and indemnify City, and its elected officials, officers, employees, servants, designated volunteers, and those City agents serving as independent contractors in the role of City officials (collectively, "Indemnitees"), with respect to any and all claims, demands, damages, liabilities, losses, costs or expenses, including reimbursement of attorneys' fees and costs of defense (collectively, "Claims" hereinafter), including but not limited to Claims relating to death or injury to any person and injury to any property, which arise out of, pertain to, or relate to in whole or in part to the negligence, recklessness, or willful misconduct of Consultant or any of its officers, employees, subcontractors, or agents in the performance of its design professional services under this Agreement.
- B. Other Indemnities. In connection with any and all claims, demands, damages, liabilities, losses, costs or expenses, including attorneys' fees and costs of defense (collectively, "Damages" hereinafter) not covered by Section VIII. A, Consultant shall defend, hold harmless and indemnify the Indemnitees with respect to any and all Damages, including but not limited to, Damages relating to death or injury to any person and injury to any property, which arise out of, pertain to, or relate to the acts or omissions of Consultant or any of its officers, employees, subcontractors, or agents in the performance of this Agreement, except for such loss or damage arising from the sole negligence or willful misconduct of the City, as determined by final arbitration or court decision or by the agreement of the parties. Consultant shall defend Indemnitees in any action or actions filed in connection with any such Damages with counsel of City's choice, and shall pay all costs and expenses, including all attorneys' fees and experts' costs actually incurred in connection with such defense.

Consultant's duty to defend pursuant to this Section VIII. B shall apply independent of any prior, concurrent or subsequent misconduct, negligent acts, errors or omissions of Indemnitees.

- C. Survival of Indemnification Obligations. Acceptance of insurance certificates and endorsements required under this Agreement does not relieve CONSULTANT from liability under this indemnification and hold harmless clause. The Indemnities in this Section VIII shall apply whether or not such insurance policies shall have been determined to be applicable to any of such damages or claims for damages.

## IX. INSURANCE

During the term of this Agreement CONSULTANT shall obtain and maintain in full force and effect at his/her own cost and expense the following insurance coverage:

- A. Worker's Compensation Insurance. Worker's Compensation Insurance, as required by the State of California, shall be provided that is necessary in connection with the performance of this Agreement. Such insurance shall relieve CITY from all responsibility for such benefits. Said policy shall also include employer's liability coverage no less than one million dollars (\$1,000,000.00) per accident for bodily injury and disease.
- B. General Liability Insurance. CONSULTANT shall obtain at its sole cost and keep in full force and effect during the term of this agreement commercial general liability insurance in the amount of one million dollars (\$1,000,000.00) per occurrence for bodily injury, personal injury, and property damage. Said insurance shall provide (1) that the CITY, its officers, agents, employees, and volunteers shall be named as additional insureds under the policy, and (2) that the policy shall operate as primary insurance, and that (3) no other insurance effected by the CITY or other named insureds will be called upon to cover a loss covered thereunder.
- C. Automobile Liability Insurance.  
CONSULTANT shall obtain at its sole cost and keep in full force and effect during the term of this agreement automobile liability insurance in the amount

of one million dollars (\$1,000,000.00) per occurrence for bodily injury and property damage. Said insurance shall provide (1) that the CITY, its officers, agents, employees, and volunteers shall be named as additional insureds under the policy, and (2) that the policy shall operate as primary insurance, and that (3) no other insurance effected by the CITY or other named insureds will be called upon to cover a loss covered thereunder.

D. Certificates of Insurance.

CONSULTANT shall file with the CITY's Director of Public Works upon the execution of this agreement, certificates of insurance which shall provide that no cancellation, major change in coverage, expiration, or renewal will be made during the term of this Agreement, without thirty (30) days written notice to the Director of Public Works prior to the effective date of such cancellation, or change in coverage.

E. Professional Liability Insurance. During the term of this Agreement, CONSULTANT shall maintain a professional liability insurance policy covering any loss arising out of errors, omissions, or negligent actions of CONSULTANT in the amount of not less than one million dollars (\$1,000,000.00).

X. OWNERSHIP OF DOCUMENTS

All documents prepared by CONSULTANT in the performance of his or her duties under this Agreement, including but not limited to, the plans, reproducible mylar plans, specifications, studies, reports, and contract documents shall be the property of the City of Fairfield. If this Agreement is canceled in accordance with Section VII above, all completed and partially completed documents prepared by CONSULTANT shall be delivered to the CITY in both printed and electronic format within two weeks of notice of cancellation. CONSULTANT shall not obtain or attempt to obtain copyright protection as to any documents prepared hereunder.



XI. SCOPE OF AGREEMENT

This writing constitutes the entire agreement between the parties relative to CONSULTING services on the PROJECT and no modification hereof shall be effective unless or until such modification is evidenced by a writing signed by both parties to this Agreement.

XII. PROHIBITED INTERESTS

No employee of the City of Fairfield shall have any direct financial interest in this Agreement. This Agreement shall be voidable at the option of the CITY if this provision is violated.

XIII. LOCAL EMPLOYMENT POLICY

- A. The City of Fairfield desires wherever possible to hire qualified local residents to work on City projects. Local resident is defined as a person who resides in Solano County.
- B. The City encourages an active affirmative action program on the part of its contractors, consultants, and developers.
- C. When local projects require, subcontractors, contractors, consultants, and developers will solicit proposals from qualified local firms where possible.
- D. As a way of responding to the provisions of the Davis-Bacon Act and this program, contractors, consultants, and developers will be asked to provide no more frequently than monthly, a report which lists the employee's name, job class, hours worked, salary paid, City of residence, and ethnic origin.

XIV. EMPLOYMENT DEVELOPMENT DEPT. REPORTING REQUIREMENTS.

When CITY executes an agreement for or makes payment to CONSULTANT in the amount of \$600 (six hundred dollars) or more in any one calendar year, CONSULTANT shall provide the following information to CITY to comply with Employment Development Department (EDD) reporting requirements:

- A. Whether CONSULTANT is doing business as a sole proprietorship, partnership, limited liability partnership, corporation, limited liability corporation, non-profit corporation or other form of organization.
- B. If CONSULTANT is doing business as a sole proprietorship, CONSULTANT shall provide the full name, address and social security number or federal tax identification number of the sole proprietor.
- C. If CONSULTANT is doing business as other than a sole proprietorship, CONSULTANT shall provide CONSULTANT's federal tax identification number.

XV. MISCELLANEOUS PROVISIONS

A. Legal Action.

- 1. Should either party to this Agreement bring legal action against the other, the validity, interpretation, and performance of this Agreement shall be controlled by and construed under the laws of the State of California, excluding California's choice of law rules. Venue for any such action relating to this Agreement shall be in the Solano County Superior Court.
- 2. If any legal action or other proceeding, including action for declaratory relief, is brought for the enforcement of this Agreement or because of an alleged dispute, breach, default or misrepresentation in connection with this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees, experts' fees, and other costs, in addition to any other relief to which the party may be entitled.
- 3. Should any legal action about a project between CITY and a party other than CONSULTANT require the testimony of CONSULTANT when there is no allegation that CONSULTANT was negligent, CITY shall compensate CONSULTANT for its testimony and preparation to testify at hourly rates that are agreed-upon in advance in writing by both parties.

- B. Entire Agreement; Modification. This Agreement, including any other documents incorporated herein by specific reference, represents the entire and integrated agreement between CITY and CONSULTANT and supersedes all prior negotiations, representations or agreements, either written or oral.

A party may change its address by giving written notice to the other party. Thereafter, any notice or other communication shall be addressed and transmitted to the new address. If sent by mail, any notice, tender, demand, delivery or other communication shall be deemed effective three (3) business days after it has been deposited in the United States mail. For purposes of communicating these time frames, weekends and CITY holidays shall be excluded. No communication via facsimile or electronic mail shall be effective to give any such notice or other communication hereunder.

- G. Counterparts. This Agreement may be executed in counterparts, each of which shall be considered an original.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of June 27, 2017.

CITY OF FAIRFIELD  
a municipal corporation (CITY)

  
\_\_\_\_\_  
David A. White  
City Manager *com*

By Kampos, Principal  
Wood Rodgers, Inc.  
4670 Willow Road, Suite 125  
Pleasanton, CA 94588

This Agreement may be modified or amended, or provisions or breach may be waived, only by subsequent written agreement signed by both parties.

- C. Non-Waiver of Terms, Rights and Remedies. Waiver by either party of any one or more of the conditions of performance under this Agreement shall not be a waiver of any other condition of performance under this Agreement. In no event shall the making by the CITY of any payment to CONSULTANT constitute or be construed as a waiver by the CITY of any breach of covenant, or any default which may then exist on the part of CONSULTANT, and the making of any such payment by the CITY shall in no way impair or prejudice any right or remedy available to the CITY with regard to such breach or default.
- D. Time. Time is of the essence in the performance of this Agreement.
- E. Severability. If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.
- F. Notices

Except as otherwise required by law, any notice, request, direction, demand, consent, waiver, approval or other communication required or permitted to be given hereunder shall not be effective unless it is given in writing and shall be delivered (a) in person or (b) by certified mail, postage prepaid, and addressed to the parties at the addresses stated below, or at such other address as either party may hereafter notify the other in writing as aforementioned:

To CITY:

ATTN: Julie Lucido  
City of Fairfield  
Public Works Department  
1000 Webster Street  
Fairfield, CA 94533

To CONSULTANT:

ATTN: Karrie Mosca  
Wood Rodgers, Inc.  
4670 Willow Road, Suite 125  
Pleasanton, CA 94588

## **EXHIBIT "A"**

### **Scope of Work**



June 14, 2017

Mr. George Hicks  
**City of Fairfield**  
1000 Webster Street  
Fairfield, California 94533

**Re: Villages at Fairfield, Traffic Signal at Clay Bank Road and Fonstall Way**

Dear George,

Wood Rodgers is pleased to provide this proposal to provide engineering and construction staking services for the design and construction of a Traffic Signal at the intersection of Clay Bank Road and Fonstall Way in the City of Fairfield, CA.

Our scope of work and estimated fee, based on the assumptions and understanding above is as follows:

**SCOPE OF WORK**

**ESTIMATED FEE**

**I. ENGINEERING DESIGN**

**A. Traffic Signal Plans**

**\$11,000 T&M**

1. Prepare traffic signal plans necessary for the intersection of Clay Bank Road and Fonstall Way in accordance with the City of Fairfield standards and approval of the City Traffic Engineer.
2. Submit 90% submittal to City. Assume two week review cycle from City.
3. Address City comments and submit final signed mylar to City for construction.
4. Upon completion of construction Wood Rodgers will provide 1 hard copy and 1 electronic copy of the record drawings

**TOTAL ENGINEERING DESIGN ESTIMATED FEE**

**\$11,000 T&M**

**II. CONSTRUCTION STAKING**

**B. Traffic Signal**

**\$2,500 T&M**

1. Provide one (1) set of construction stakes for the traffic signal at Fonstall Way and Claybank Road.

**TOTAL CONSTRUCTION STAKING ESTIMATED FEE**

**\$2,500 T&M**

III. CONSTRUCTION SUPPORT SERVICES	\$5,000 T&M
A. Construction Support - Provide office and field engineering support during bidding and construction including the following on a time and material basis;	
1. Respond to contractor questions during bidding.	
2. Prepare miscellaneous exhibits for Construction Support as requested by the client.	
3. Provide construction support; attend pre-job and field meetings.	
TOTAL CONSTRUCTION SUPPORT SERVICES ESTIMATED FEE	\$5,000 T&M
<b>TOTAL ESTIMATE FEE</b>	<b>\$18,500 T&amp;M</b>

The estimated fees are based on negotiated rates to be utilized for the scope of work and budgets identified above.

We propose to perform the above-identified scope of work on a time and materials (T&M) basis with a fee not to exceed \$18,500 subject to the following conditions:

## **EXHIBIT "B"**

### **Fee Schedule**





## EXHIBIT B

Effective January 1, 2017

CLASSIFICATION	STANDARD RATE
Principal Engineer/Geologist/Surveyor/Planner/LA* II	\$235
Principal Engineer/Geologist/Surveyor/Planner/LA* I	\$195
Associate Engineer/Geologist/Surveyor/Planner/GIS/LA* III	\$190
Associate Engineer/Geologist/Surveyor/Planner/GIS/LA* II	\$180
Associate Engineer/Geologist/Surveyor/Planner/GIS/LA* I	\$170
Engineer/Geologist/Surveyor/Planner/GIS/LA* III	\$160
Engineer/Geologist/Surveyor/Planner/GIS/LA* II	\$150
Engineer/Geologist/Surveyor/Planner/GIS/LA* I	\$140
Assistant Engineer/Geologist/Surveyor/Planner/GIS/LA*	\$115
CAD Technician III	\$130
CAD Technician II	\$120
CAD Technician I	\$110
Project Coordinator	\$120
Administrative Assistant	\$100
1 Person Survey Crew	\$185
2 Person Survey Crew	\$265
3 Person Survey Crew	\$345
Consultants, Outside Services, Materials & Direct Charges	Cost Plus 10%
Overtime Work	Rate Plus 50%

\*LA = Landscape Architect

Blueprints, reproductions, and outside graphic services will be charged at vendor invoice. Auto mileage will be charged at the IRS standard rate, currently 53.5 cents per mile.

Fee Schedule subject to change January 1, 2018.